



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Mr. Jack Woods
General Counsel
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR95-1236

Dear Mr. Woods:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36288.

The Texas Commission on Fire Protection (the "commission") received a request for information concerning investigations into internal allegations against A. A. Barrette, John Wynn, and Rick Womack. You claim that portions of the requested information are excepted from required public disclosure under sections 552.101 and 552.103 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The commission must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the requestor has filed a civil rights complaint against the commission alleging age discrimination. You have submitted a copy of the complaint filed in the United States District Court, Western District of Texas, for our information. Accordingly, you have met the first prong as it relates to the pending litigation by the requestor. See Open Records Decision No. 386 (1983). You further claim that the information is excepted under section 552.103 "because several of the individuals whose

statements are included have indicated that they will or probably will initiate individual legal action against the agency based upon the factual allegations in the transcripts." This office has ruled that when a requestor publicly states on more than one occasion an intent to sue, that fact alone does not trigger section 552.103. Open Records Decision No. 452 (1986). Nor does an isolated telephone threat of litigation, without more, trigger section 552.103. *Id.* Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 518 (1989), 328 (1982). Accordingly, you have not met your burden to show that litigation is reasonably anticipated in regards to the individuals whose statements are included in the investigations. We need only address whether you have demonstrated that the submitted documents relate to the pending age discrimination litigation.

You have made no attempt to explain in any detail how the submitted information relates to the pending litigation. However, the investigation designated as "Texas Commission on Fire Protection vs A. A. Barrette" when read in conjunction with the complaint demonstrates on its face that the information is related to the pending litigation. You may withhold this information under section 552.103 of the Government Code.¹ The other two investigations--concerning John Wynn and Rick Womack--do not demonstrate on their face how they relate to the pending litigation. Accordingly, you must release this information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/rho

Ref: ID# 36288

Enclosures: Submitted documents
cc: Mr. James M. Freeman
(w/o enclosures)

¹As we resolve this matter under section 552.103, we need not address the applicability of section 552.101.